

Response and Amendment
Docket No. 2301-M

Immunex Corporation

Remarks

Withdrawn Objections and Rejections

Applicants gratefully acknowledge the withdrawal of the objections to the Specification and the Abstract, and of the rejections under 35 USC § 112, first paragraph (enablement and written description).

Election/Restrictions

Applicants respectfully maintain their traversal of the previously-issued Election/Restriction requirement.

Amendments

In the Claims

Applicants have amended Claim 9 solely to more particularly recite the claimed subject matter and to expedite prosecution. The amendments do not add new matter and are fully supported by the application as originally filed, for example, by Example 13 and by the originally filed claims. Accordingly, Applicants respectfully request that the amendment be entered and made of record.

The amendment is made without prejudice or disclaimer. Applicants reserve the right to pursue withdrawn, cancelled, or amended subject matter in one or more timely filed divisional, continuation, or continuation-in-part applications.

Rejections

35 USC § 101 (Patentable Subject Matter)

Claim 9 is rejected under 35 USC § 101, for allegedly being directed to non-statutory subject matter. It is asserted that Claim 9 encompasses products of nature. Applicants respectfully point out that it has not been shown that the subject matter of Claim 9 exists anywhere in nature, and so the instant rejection is improper. Nonetheless, solely to expedite prosecution, Applicants have amended Claim 9 to recite an "isolated" antibody. Accordingly, the instant rejection is moot, and Applicants respectfully request that it be withdrawn.

Double Patenting

Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over Claims 1 and 3 of U.S. Patent 5,717,072. Without acquiescing to the grounds of the rejection, Applicants will submit a timely filed terminal disclaimer when the claims have been found otherwise allowable.

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CONCLUSION

Applicants believe that the application is in condition for allowance. An early and favorable action on the merits is earnestly solicited.

The Examiner is invited to call the undersigned attorney at (206) 265-8779 upon receipt and review of this Response to discuss any questions or concerns.

Respectfully submitted,



Nathan A. Machin

Registration No. 47,763

Direct Dial No. (206) 265-8779

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Immunex Corporation
Law Department
1201 Amgen Court West
Seattle, WA 98119-3105
Telephone (206) 265-7000